

(2007) 03 BOM CK 0123

In the Bombay High Court

Case No : Writ Petition No. 2607 of 1995

Shikshan Prasarak Mandal and Others

APPELLANT

Vs

Presiding Officer and Others

RESPONDENT

Date of Decision : 13-03-2007

Acts Referred:

Constitution of India, 1950 — Article 20(2)

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 — Section 9

Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 — Rule 22, 22(2), 28, 28(5), 36

Citation : (2007) 3 ALLMR 773 : (2007) 3 BomCR 646

Hon'ble Judges : Dharmadhikari B.P., J

Bench : Single Bench

Advocate : S.J. Kadu and Z.A. Haq, for the Appellant; D.P. Thakare, A.G.P. for Respondent Nos. 1 and 3 and M.K. Pathan, for the Respondent

Final Decision : Allowed

Judgement

Dharmadhikari B.P., J.—Heard Shri S.J. Kadu, Advocate holding for Shri Haq, learned Counsel for the petitioners, Shri Thakare, learned AGP for respondents No. 1 & 3 and Shri Pathan, learned Counsel for respondent No. 4.

2. The management has challenged in this writ petition judgment of the School Tribunal dated 27.7.1995, allowing the appeal preferred before it by respondent No. 4. employee on the ground that the management could not have issued to respondent No. 4 charge-sheet and could not have inflicted upon him any punishment. It has found that for the very same act or misconduct, the Maharashtra State Board of Secondary and Higher Secondary Education, Amravati Division, Amravati, had already taken disciplinary action against respondent No. 4 and he was already punished.

3. The facts are not much in dispute. The Board i.e. present respondent No. 2 is statutorily constituted body entrusted with the work of conducting Annual

Examinations of 10th & 12th Class students at State Level. It selects teachers working in various Schools for setting question papers, as Invigilators to conduct exams at Centers approved by it, for evaluating solved answer-sheets, for moderation etc. It has on 3.9.1992 informed the petitioners that it found that respondent No. 4 had indulged in malpractices while undertaking work of valuation of answer papers for Higher Secondary Examination conducted by Board in March 1992. Hence all his honorarium for the said work was forfeited and he was disqualified from doing that work in future. It appears that the said action was for giving extra marks to 16 students. In view of this communication, on 6.10.1992, the petitioners communicated charges to respondent No. 4. The first charge was - deliberately giving extra marks or more marks while evaluating 16 answer sheets and second charge was - of getting answers written at places left blank in answer sheets and giving marks for such answers. A departmental enquiry was then conducted on the basis of these charges and ultimately respondent No. 4 was dismissed by the order dated 27.8.1993 from 1.9.1993. respondent No. 4 then filed appeal u/s 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, (hereinafter referred to as the Act) and contended that Enquiry Committee was not properly constituted, enquiry was not conducted as per provisions of Rules 36 and 37 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, (hereinafter referred to as. the Rules) and in fact his management could not have conducted any such enquiry. On the basis of rival pleadings, the School Tribunal framed the issues and has answered all those issues in favour of employee and against the management. The basic reason given by the School Tribunal is that the Employer. Present petitioners had no jurisdiction to frame charges and said jurisdiction was with present respondent No. 2. Education Board which it had already used to punish respondent No. 4. It has further found that a retired Head Master could not have been appointed as a Member of Enquiry Committee and therefore constitution of Enquiry Committee was not proper. It has also found that there was no material before it to issue termination order because the provisions of Rule 37 of the Rules were not complied with. It also found that when respondent No. 4 was already punished by the Board for those acts, imposing punishment again by the management upon him constituted double punishment and was, therefore, in violation of Article 20(2) of Constitution of India. Lastly, it concluded that punishment was excessive.

4. The learned Counsel for the petitioners has contended that the provisions of Rule 28 read with Rule 22 of the Rules permit the management to take action against such teacher and he has further stated that action taken by the Board against respondent No. 4 was not as his Employer. He states that the Rule 22 prescribing Code of conduct nowhere contemplates that the students whose marks are increased must be the students of management with whom respondent No. 4 was working. He further states that in these circumstances, there was no question of double punishment and also of violation of principles of natural justice. He points out that the order of punishment passed by Secondary

Board was not questioned anywhere by present respondent No. 4 and as said punishment was accepted and suffered by him, the action of the petitioners was only consequential. He has, therefore, argued that the judgment delivered by the School Tribunal needs to be quashed and set aside and writ petition needs to be allowed.

5. Shri Pathan, learned Counsel for respondent No. 4 has stated that respondent No. 4 has not accepted the punishment inflicted upon him by respondent No. 2. Board but he made number of representations for withdrawing it. He farther states that after impugned termination, respondent No. 4 got another employment and he is being appointed as Valuer/ Moderator or Conductor by respondent No. 2. Board after he got said employment. He contends that in these circumstances, the argument that respondent No. 1 has suffered the punishment as inflicted by Board is misconceived. He further argues that the provisions of the Act and the Rules lay down the service conditions and terms which are determinative 8B applicable between the employer and employee. He argues that therefore the students contemplated in Rule 22 are the students who have taken admission in the School run by the Employer of respondent No. 4 and not other or outside students. He further states that the misconduct contemplated under Rule 22 of the Rules read with Rule 28 of the Rules is, therefore, qua the working of Employer and therefore in relation to students taking education in the institution. He argues that alleged misconduct committed by respondent No. 4, was in relation to students who had undertaken Board examination and were not students of the petitioners. Management, therefore, without any impact on it. Unrelated episode could not have been inquired into by the petitioners. Management and the issuance of charge sheet itself was without jurisdiction. He contends that the School Tribunal has accordingly answered these issues in favour of respondent No. 4. He further states that in these circumstances, the School Tribunal has also further observed that when the Board has already punished respondent No. 4 for misconduct committed by him, qua such student, the petitioners could not have inflicted any punishment for the very same acts.

6. The question to be decided, therefore, is whether the acts of giving more marks to students in Higher Secondary examination conducted by respondent No. 2 constitute misconduct so as to enable the petitioners. Management to take cognizance thereof and to proceed against respondent No. 4 under the Rules. The documents on record demonstrate that respondent No. 2. Board has found respondent No. 4 guilty of said misconduct and therefore, has inflicted punishment upon him. The submissions of learned Counsel for respondent No. 4 that respondent No. 4 thereafter has been permitted by respondent No. 2. Board to function as Conductor or Moderator of Secondary and Higher Secondary Examinations cannot be looked into because no order withdrawing the permanent disqualification imposed by the Board upon him is produced before this Court and no such order was produced even before the School Tribunal. It is, therefore, apparent that the order imposing punishment upon respondent No. 4

and disqualifying him permanently from working as such in future examination conducted by respondent No. 2 . Board still holds the field. Besides this, Respondent No. 4 has to show that Board has exonerated him so as to assail departmental action taken by petitioners which in a sense is dependant upon Board's punishment. Merely showing that respondent No. 2 Board itself is not honouring its own punishment order is not sufficient in present matter. Respondent No. 2 Board has not chosen to appear in this petition as there is no challenge to its action & these observations are restricted to show hollowness in oral arguments of learned Advocate Pathan. There may be valid excuse and material with Board for defending its alleged step of permitting Respondent No. 4 to undertake examination work but it is not relevant in present background.

7. The perusal of Rule 28 of the Rules, particularly sub-Rule (5) thereof shows that the management can punish an employee, if he is guilty of misconduct, moral turpitude. The misconduct has been defined by Sub-clause (a) of said Sub-rule 5 of the Rules to mean violation of the Code of Conduct and other act of similar nature. The perusal of Rule 22 of the Rules reveals that it lays down the Duties and Code of Conduct for teaching as also non-teaching staff. As per Sub-rule 2(d) of Rule 22, a teacher has to be impartial in assessment of students and he cannot deliberately over mark or under mark (i.e. giving marks more or less than due) or victimise students on any ground. It is, therefore, apparent that said clause requires respondent No. 4 to be impartial in assessment of students and also not to deliberately over mark students on any ground. In the facts in which respondent No. 2 . Board has punished respondent No. 4, it is apparent that respondent No. 2. Board found that he has increased marks of 16 students. The communication dated 23.9.1992 reveals that respondent No. 4 has given more marks than were due/earned on the answer examined or valued by him. In this situation, the next charge found proved by respondent No. 2. Board is of getting answers written at spaces left blank by the students in answer sheets and giving marks even on such subsequently written answers. This action of Board is not challenged before competent forum and even today jurisdiction of Board in this respect is not challenged. It is, therefore, clear that the Board has found respondent No. 4 guilty of acts amounting to violating Code of conduct insofar as provisions of Rule 22(2)(d) are concerned. The learned Counsel for respondent No. 4 has tried to contend that this misconduct is not proved before the Enquiry Committee appointed by the petitioners. The fact that the misconduct is found proved by the Board which is Competent Authority in view of the provisions of regulations framed by Board in this respect & the fact that respondent No. 4 has suffered this punishment without challenging it, clearly goes to show that it was not necessary for the petitioners. Management to hold any detailed or independent departmental enquiry into it. The situation that management would exonerate respondent No. 4 of charges formulated on acts for which respondent No. 2. Board has found him guilty will result in paradox and therefore cannot be even presumed. Until and unless respondent No. 4 shows that said order of punishment passed by respondent No. 2. Board has been

quashed and set aside as per law by Competent Court, said order is to be treated as valid and can be given effect to by the petitioners. Management.

8. The provisions of Rule 22(2)(d) of the Rules only speak of teacher and students. The provision nowhere states that the teacher who undertook assessment of answer sheets must be the person who has actually taught the students whose papers he has evaluated. Similarly, it has not been stipulated that the students whose papers have been assessed must be one who have taken instruction from such teacher. For independent & impartial evaluation of all students on uniform basis respondent No. 4 Board is & has been taking answer-papers evaluated through different teachers. Identity of Examinee/ Student & assessing teacher is kept secret by Board. Even in same school in internal examination a teacher who has not taught particular section may be required to assess answer-papers of that section. The Rules do not prohibit a teacher of one School from examining answer papers and from judging performance of students of other school. There is no requirement of any direct student-teacher relationship between them. Respondent No. 4 has done assessment work only because of his status as a teacher and therefore his performance is subject to provisions of Rule 22(2)(d) of the Rules. He enabled undeserving students to score more marks and prejudiced innocent honest students by jeopardizing their entire careers. Provisions of the Act & Rules are not meant to be mute spectators to such misdeeds. The language of said clause is wide and provisions of Sub-rule (5) of Rule 28 of the Rules also show that it defines misconduct in very wide terms. Looking to the status & position of teacher in society, nature of relationship of teacher and student, position of teacher qua a student and the fact that the teacher may be required to come in contact with students in various capacities, the language of Rule 22(2)(d) & Sub-rule (5) of Rule 28 has been deliberately kept wide. Intention of framers behind it is to maintain dignity & prestige of teacher in society at large and not only in his school. There is nothing unjust or arbitrary about it. That intention needs to be respected and implemented. The distinction sought to be drawn by respondent No. 4 in this respect is, therefore, artificial one and in fact not available.

9. In this view, I find that the School Tribunal was in error in holding that the petitioners. Management had no jurisdiction to enquire into the misconduct committed by respondent No. 4, that there was any violation of Rule 36 or 37 of the Rules. Petitioner alone had jurisdiction to proceed for misconduct against respondent No. 4 and respondent No. 2. Board had punished him for violation of its regulations independently and there was no question of breach of Article 20(2) of the Constitution of India. The School Tribunal has found that there is no provision which enables the petitioner management to appoint retired Head Master as Member of the Enquiry Committee. Suffice it to mention that the Hon'ble Division Bench of this Court in the case of Sudha Vs. Yashodabai Shikshan Sanstha and Others, has found that there has to be express prohibition in this respect in the Rules. In absence of any such prohibition in the Rules, the appointment of retired teacher as Member of Enquiry Committee has been held

to be valid by Division Bench though there was a Government Resolution which prohibited such appointment if nominee was above 65 years of age.

10. At this stage, Shri Pathan, learned Counsel for respondent No. 4 states that there is violation of Rule 36(1) of the Rules. However, as already observed above, when the order of punishment imposed by respondent No. 2. Board upon respondent No. 4 stands, the argument has got no sanctity. Similarly, punishment cannot be said to be disproportionate at all because once misconduct of present nature is proved, it is for the Employer to maintain standards of discipline. A teacher like Respondent No. 4 who does not himself honour his own position and sanctity of such important examinations, and on the contrary violates it, can not claim any right to be continued as teacher. School Tribunal has acted without jurisdiction in sitting in appeal in this respect as it can not be said that no reasonable employer would have imposed similar punishment in similar circumstances.

11. In the circumstances, the impugned judgment dated 27.7.1995 delivered by the School Tribunal is quashed and set aside. Appeal filed by respondent No. 4 before School Tribunal is dismissed. Writ Petition is allowed. Rule is made absolute in above terms. However, in the circumstances of the case, there shall be no order as to costs.